

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION**

**JAY GREGORY BRANCH SR. and
TERRI ROBERTS BRANCH,**

Plaintiffs,

v.

TIFTON BANKING COMPANY,

Defendant.

Civil Action No. 7:11-CV-44 (HL)

ORDER

This case is before the Court on the Federal Deposit Insurance Corporation as Receiver for Tifton Banking Company's Motion for Stay Pending Appeal (Doc. 16).

The FDIC has filed a notice of appeal relating to the Court's order remanding this case to the Superior Court of Tift County. The FDIC now moves the Court to stay its remand order pending final determination of the appeal.

28 U.S.C. § 1447(d) provides that "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise." Section 1447(d) limits the authority of federal district and appellate courts to review remand orders. In re Loudermilch, 158 F.3d 1143, 1145 (11th Cir. 1998). The FDIC contends that the Court has jurisdiction to stay the remand order because the order is appealable under 12 U.S.C. § 1819(b)(2)(C). That code section provides that the FDIC "may appeal any order of remand entered by any United States district court." 12 U.S.C. § 1819(b)(2)(C). "[I]n cases to which the FDIC is a party, this section establishes an independent

exception to the general rule of nonreviewability of remand orders contained in § 1447(d).” First Union Nat. Bank of Fla. v. Hall, 123 F.3d 1374, 1378 (11th Cir. 1997). The FDIC, however, is not a party to this case. The Superior Court did not enter an order substituting the FDIC as a party prior to removal, and this Court vacated its order granting the FDIC’s motion to substitute itself, as receiver for the Bank, as the defendant in this case. Section 1819 does not apply to this case. The Court does not have jurisdiction to stay the remand order.

The Motion to Stay Pending Appeal (Doc. 16) is denied.

SO ORDERED, this the 23rd day of August, 2011.

s/ Hugh Lawson
HUGH LAWSON, SENIOR JUDGE

mbh